IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 9018 of 2001

AND

CRIMINAL MISC.APPLICATION No 9021 of 2001

For Approval and Signature:

HON'BLE MR.JUSTICE D.P.BUCH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

AHMEDABAD MUNICIPAL CORPORATION

Versus

SHAYAMLAL NARAYANLAL AGRAWAL

Appearance:

1. Criminal Misc.Application No. 9018 & 9021 of 2001

MR MAULIN R RAVAL for Petitioner No. 1

..... for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 15/09/2003

COMMON ORAL JUDGEMENT

The petitioner above named has preferred these two applications for Special Leave to Appeal under subsection 4 of section 378 of the Code of Criminal Procedure, 1973 (for short, "the Code") in order to challenge judgments and acquittal orders recorded by the learned Metropolitan Magistrate, Court No.8, Ahmedabad on 31/05/01 in two different criminal cases, being Criminal Case No.71/1997 and 35/1997 respectively for an offence punishable u/s.7 read with s.16 of the Prevention of Food Adulteration Act, 1954 (for short, "the Act") acquitting the contesting respondent from the said offence.

2. The petitioner is the Municipal Corporation for the city of Ahmedabad, established and constituted under the Bombay Provincial Municipal Corporation Act, 1949 and through the Corporation, its Food Inspector had filed two different criminal cases as aforesaid before the above Court. When the food was referred to the Public Analyst, it was found to be adulterated and therefore, after following due procedure, complaints were filed and they were ordered to be registered and summons was issued against the concerned respondent in each matter.

3. The learned Magistrate found that the sanction accorded by the concerned officer was not in accordance with law. Without a legal and valid sanction, as required by s.20 of the said Act, the prosecution would not be a good one and the contesting respondent could not be convicted on the strength of the said sanction. On appreciation of the order of sanction, the learned Magistrate acquitted the contesting respondent by judgment and order dated 31/05/01.

4. Feeling aggrieved by the said judgment and acquittal order of the trial court, the petitioner has preferred these two applications for Special Leave to Appeal under subsection 4 of section 378 of the said Code.

5. It has been mainly contended here that the sanction was legal and valid and the trial court has committed serious illegality in holding the matter otherwise; that, therefore, the petitioner may be granted Special Leave to Appeal against the said judgments and acquittal orders of the trial court. On the above issue, I have heard the learned advocate for the petitioner in each matter and Mr.S S Patel learned APP for the State. On appreciation of the arguments, it is found that the trial court has depended, for its acquittal judgment, mainly on the ground that the sanction accorded, was not

legal and valid and without having a legal and valid sanction u/s.20 of the said Act, the contesting respondent in each case cannot be convicted. Therefore, the main issue before this Court is as to whether the sanction accorded by the sanctioning authority can be treated to be a legal and valid sanction.

6. For the said purpose, it would be necessary to consider the sanction accorded by the sanctioning authority. It has been observed in the judgment by the learned Magistrate that the sanctioning authority has endorsed below the complaint, Ex.1, as follows :

"Scrutinized all the papers and sanctioned prosecution".

7. It was contended by the learned advocate for the contesting respondent before the trial court that this could not be treated to be a legal and valid sanction. The reason for so arguing was that from the above endorsement or order, it cannot be ascertained as to which documents were considered by the sanctioning authority, since, there was no such mention or reference to such documents in the said sanction order; that, therefore, it amounted to a grant of sanction, without due application of mind.

8. The learned Magistrate was required to consider a decision of this Court dated 15/09/2000 passed in Cr.R.A.No.110/1994 in the case of Shankarlal Mangilal Jain V/s. State of Gujarat. The learned Judge in the said matter (Hon'ble Miss Justice R.M.Doshit) was required to consider an issue of sanction for prosecuting the accused person in the said matter u/s.20(1) of the said Act. There also the sanction accorded was in following words :

"Scrutinized all the papers and sanctioned prosecution".

9. On appreciation of the above wordings of consent of the sanctioning authority, the learned Judge, while pronouncing the aforesaid judgment, expressed the view that this cannot be treated to be a valid consent and it cannot be said that the sanction was accorded or consent was given, on the strength of a particular set of documents. It also cannot be said as to what documents were actually considered by the sanctioning authority. The pertinent observations of the learned Judge in the said judgment can be reproduced for ready reference as follows;

"The consent as recorded does not evidence active application of mind. Though no reasons are required to be recorded while granting consent under section 20 of the Act, the prosecution is duty bound to satisfy the court that the consent had been given after perusal of all the relevant papers and after proper application of mind. Such application of mind can either be manifest in the consent granted or can be proved by oral evidence. In the present case, the Food Inspector has deposed that he had drafted the complaint and had submitted all the papers to the competent authority. The consenting authority had perused all the papers and recorded the consent as aforesaid. I am afraid, this is not sufficient to satisfy the court as regards the proper application of mind. The Food Inspector has not disclosed which were the papers which were placed before the consenting authority, nor the competent authority had been examined by the prosecution. Hence, in my view, the prosecution has failed to prove that the consenting authority had granted consent under section 20(1) of the Act after scrutinising all the relevant papers and after proper application of mind".

10. On the strength of the above observation, it can be said that before a consent or sanction is held to be legal and valid, it has to be ascertained that the consent or sanction has been given or accorded, after due application of mind to the materials placed before the sanctioning authority. In the aforesaid matter, the learned Judge has observed that it would not be ascertainable as to which documents or material were referred by the sanctioning authority and which documents or materials were placed before the sanctioning authority by the complainant.

11. In the present case also, it is not ascertainable as to what documents and materials were placed before the sanctioning authority and what documents or materials were considered by it, while giving consent to the prosecution u/s.20(1) of the said Act. Therefore, the consent given has to be treated to be a consent suffering from the infirmity of non-application of mind and once, it is found that a consent has been given, without appropriate application of mind, then such a consent cannot be treated to be legal and valid. It is very clear that the very object of providing for a consent or a sanction has its own meaning. The offence punishable

u/s.6 of the Act are serious in nature and the punishment awardable is also grave in nature. Therefore, considering the nature of offence and the punishment provided therein for the said offence, a rider has been placed on the prosecution of such accused persons that the prosecution will commence only on the consent given by a competent sanctioning authority. If such an authority issues sanctions or consents to the prosecution, without appropriate application of mind, then the entire object of making the provision for such sanction or consent, will naturally be frustrated. This is exactly what has happened in the present case also. The sanctioning authority has given its consent, without due application of mind and therefore, it cannot be treated to be a legal and valid consent.

12. In above view of the matter, I am of the opinion that the consent given by the sanctioning authority is not legal and valid and consequently, in view of the positive requirement of s.20(1) of the said Act, the natural consequence is that the trial will stand vitiated and the accused person would be entitled to an acquittal, or discharge, as the case may be. In the present case also the learned Magistrate has considered the above aspects and has found that the consent given by the sanctioning authority is not legal and valid and consequently, the trial court has acquitted the contesting resopndent, holding that the consent is not legal and valid, as it has been given without due application of mind. The said approach of the trial court cannot be treated to be illegal. It is more so when the trial court has considered the binding decision of this Court dated 15/09/2000 recorded in Cr.R.A.No.110/1994. In above view of the matter, the judgment and acquittal order of the trial court are not found to be illegal and invalid even prima facie and therefore, no question of granting leave to appeal to the petitioner arises. Therefore, the two applications filed by the petitioners for leave to appeal under subsection 4 of section 378 of the Code are required to be dismissed.

13. For the foregoing reasons, these two applications are dismissed at admission stage.

(D. P. Buch, J.)

pravin/